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BOOK REVIEWS

CASES ON THE LAW OF DOMESTIC RELATIONS AND PERSONS. Third Edition. By EDWIN H. WOODRUFF. New York: BAKER, VOORHIS & Co. 1920. pp. xviii, 753.

In the preparation of textbooks, other than those avowedly mere "digest" books or law class texts, space and publishers' restrictions play subordinate parts and the author enjoys comparative freedom within the limitations he sets for himself. He writes with the exposition of his own ideas primarily in mind and accordingly he may be judged, with entire fairness, by what he puts down on the printed page and by his omissions. But casebooks are compiled with two distinct objects in view, the utilization of the book as a teaching vehicle and its potential adoptability by a large portion of the law school world, without which no publisher would undertake publication. The latter consideration, as well as the former, obviously affects the final form of the casebook, both by setting an artificial space-limitation and influencing the form, substance and arrangement of the contents. Hence a casebook offers a comparatively narrow gauge of the compiler's ideas and the reviewer must make considerable allowance for external restrictions imposed on the editor and judge the work primarily by the impression it makes from the standpoint of actual or apparent "teachability."

It is patent from almost a mere glance at the contents of the third edition of this well-known and standard casebook that it has been prepared by an experienced teacher thoroughly familiar with the extensive subject. This is shown by the inclusion of certain valuable matter unfortunately not always found in casebooks on these particular branches of the law and to be discovered only by careful research along lines rather off the beaten track. Among this material may be mentioned Lord Herschell's motion to restrict breach of promise suits and to confine damages therein to actual pecuniary loss (footnotes pp. 31-32), the extract from Daniel on *Negotiable Instruments* as to the liability of an infant on a note for necessities (footnotes pp. 591-592), the pithy summary of paraphernal property (pp. 159-162) and the cases dealing with an infant's "non-voidable contracts" (pp. 564-570). The collection of footnote references to recent law review comments furnishes additional evidence of thoroughgoing and up-to-date scholarship, as do also the very satisfactory collections of cases on many specific topics and sub-topics, of which "Effect of Divorce," "Wife's Contracts for Necessaries," "Torts to a Spouse in the Marital Relation," "Crimes by Drunken Persons," "Legitimacy," and "Adoption" form typical examples. The reviewer wishes, however, that commentators on the effect of infants' powers of attorney would get into the habit of stating, when citing *Hastings v. Dollarhide*¹ (footnote p. 490), that this case apparently has been overturned by § 33 of the California Civil Code as interpreted by *Hakes Inv. Co. v. Lyons*.² It seems also, to the reviewer, that the compiler has been led into one slip by his very mastery of the field. Thus in the reprints of some of the cases the decisions made in the lower courts seem impossible to determine, or are to be made out only by inference or patient digging, which obscures the final holdings and the points for which the cases were actually inserted. Obviously these points are second nature to the editor, who does not need to make, each time he teaches the course, a fresh comparison of what happened at the trial with the ultimate holding on appeal. But this is not the situation of the less perfectly oriented student.

¹ (1864) 24 Cal. 195.

² (1913) 166 Cal. 557, 137 Pac. 911.

Notwithstanding the many excellent points of the work several features strike the reviewer as unfortunate or at least of questionable value. Thus considerable space is devoted to topics which, although falling within the field of "Persons and Domestic Relations," belong equally to other branches of the law, in connection with which they are often, if not usually treated in law class discussion. Such topics include "Dower," "Curtesy," "Estates by the Entirety," the above-mentioned excellently outlined "Crimes by Drunken Persons," and matter which really seems to belong to "Conflict of Laws," such as the effect of attempted evasions of local marriage laws, the law determining the validity of consanguinous marriages and the entire subject of extraterritoriality of divorce decrees. Of course there is room for reasonable difference of opinion as to where the line should be drawn between overlapping branches of law in preparing a casebook, and the publisher's idea as to the effect of the scope of the work upon ultimate salability is likely to play considerable part in determining the final contents. But the reviewer believes that the book would gain had there been substituted for the cases on the topics just mentioned additional material on other subjects which to him seem unduly slighted.

A few of these latter subjects may be discussed briefly, by way of illustration. In "Contract of Marriage—Mental Incapacity" one of the two cases obviously belongs to "Divorce," and the important matter of the appropriate test for insanity is compressed to a brief extract in a footnote. In "Contract of Marriage—Fraud" only one case is devoted to the complex problem of the consequences of false representations of pregnancy inducing marriage and only one view is given of the concealment of actual antenuptial pregnancy by another than the husband. The interesting and very "teachable" topic, "Infancy—Torts by Infants—When Connected with Contract," would gain considerably by the addition, first, of a case dealing with an infant's liability in deceit when he makes a false warranty and second, of an extract from *Fitts v. Hall*,³ the reasoning and language of which render it excellent for comparison with *Rice v. Boyer* (p. 599) and *Slayton v. Barry* (p. 605). It seems to the reviewer that much of the force of this class of cases, extremely valuable from the standpoint of mental drill, has been lost, so far as the casebook itself is concerned, by the curtailment. Finally the topic of "Husband and Wife" seems confined too closely to the old common law rules. Amplification of these subjects at least would be well worth the extra space.

Space limitations seem likely to account for another feature of the book which does not impress the reviewer favorably, its "textiness," if word-coining be permitted. Scattered through the entire volume are extracts culled from opinions and purporting to be principally judicial statements of the law. In some of these passages the facts of the particular case involved can be ascertained or inferred, but in many others they cannot. This renders the treatment of many legal rules purely textual. Some text matter in a casebook is inevitable. But when many important matters, such as the entire topic "Infancy—What are Necessaries" (save for a single point) and the complicated and puzzling problem of the effect of an infant's false representations of his age on his contracts (as distinguished from his tort liability in deceit) are handled textually, the reviewer cannot but believe that far too much text-treatment has been introduced into the work under discussion.

To conclude, there is no doubt that the casebook can be utilized to good advantage in the classroom. But to the reviewer it seems best adapted either to a course which must be given in rather limited time or to a lengthier course in which the instructor prefers to touch lightly on many topics and points of law. The book does not lend itself conveniently, in the reviewer's opinion, to a

³ (1838) 9 N. H. 441.

course in which the teacher attempts to go deeply and intensively into comparatively few topics at the possible sacrifice of "ground-covering."

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THE LAW AND PRACTICE IN BANKRUPTCY. By WILLIAM M. COLLIER. Twelfth Edition. Edited by FRANK B. GILBERT and FRED E. ROSBROOK. Albany: MATTHEW BENDER & COMPANY. 1921. Vol. I, pp. cxxxviii, 836; Vol. II, pp. xii, 837-1729.

Aside from its references to authorities of date later than those cited in the last preceding edition, the usefulness of the present issue lies in its reprint of the Canadian Bankruptcy Act which went into effect last year. There having been no amendments of our own statute since the eleventh edition of Collier was put forth, the twelfth has no new features to chronicle in that behalf. It stands before us, therefore, as but a continuation, in new dress, of its eleven predecessors, with all of their good points.

And with their faults as well. On two previous occasions earlier editions of Collier on *Bankruptcy* have been examined by this reviewer.¹ Certain things were then mentioned which it is needless to repeat; but it is noteworthy that some of them continue. The present text (p. 859) still states, on the authority of *In re Levi*² that

"a dismissal may be had on motion of bankrupt without notice to creditors who have not intervened, where there is no suggestion of collusion."

In reviewing the eighth edition, where the same language was used, it was shown that this could not be a true statement of the law in view of the amendment, made in 1910, of section 59g of the Bankruptcy Act, an amendment which, it was suggested, was designed to change the law and to make unavailing the rule laid down in the *Levi case*.³ Yet through all the later editions of Collier this statement has clung in the text, although in the present edition it is preceded by a sentence which, stating the law as it is today, nullifies what follows:

"It is provided by the amendment of 1910 that before the court will entertain an application for a dismissal, the bankrupt must file a list of his creditors with the addresses, and will cause notices to be served on such creditors." (p. 859)

That states the law as it is, that there can be no dismissal without notice; and therefore the next succeeding sentence, given on the authority of the *Levi case*, is as out of place in the present edition as it was in the one which appeared eleven years ago.

What this work really needs is a thorough revision of the text. It should be overhauled in each place where amendments, to say nothing of decisions, have changed the law in the years that have gone since the original author put forth his valuable book. And until that is done, there will always remain room for criticism which a reviewer would much prefer to omit in view of the manifold merits that Collier on *Bankruptcy* has demonstrated to be its own.

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¹ Eighth Edition, (1911) 11 COLUMBIA LAW REV. 389; Tenth Edition, (1914) 14 COLUMBIA LAW REV. 697.

² (C. C. A. 1905) 142 Fed. 642.

³ (1911) 11 COLUMBIA LAW REV. 390-1.